

## **West Valley City Housing Authority Professional Services Agreement**

**THIS AGREEMENT** is made this \_\_\_\_ day of \_\_\_\_\_, 2010, by and between the West Valley City Housing Authority, (hereinafter referred to as the “WVCHA”) and Dave Bess Plumbing & Heating, (hereinafter referred to as “Bess”).

### **W I T N E S S E T H :**

**WHEREAS**, the WVCHA requires the replacement of several furnaces, swamp coolers, and water heaters within WVCHA’s 18 public housing units; and

**WHEREAS**, Bess is a qualified individual with the knowledge and expertise to provide these replacement services for the WVCHA; and

**NOW, THEREFORE**, for and in consideration of the mutual covenants made herein, the parties hereby agree as follows:

### **A G R E E M E N T :**

**1.     Service Agreement.**

The WVCHA and Bess hereby agree that Bess shall replace furnaces, swamp coolers, and water heaters, listed and quantified in Paragraph 2 of this agreement, within WVCHA-owned homes. These replacements shall be provided pursuant to the terms and conditions set forth in this Agreement, the American Recovery Reinvestment Act, State law, City code, and any applicable rule or regulation.

**2.     Services Provided by Bess.**

Bess hereby agrees to provide and complete the following replacements:

a.     Replacement of the following items:

- **Six (6) furnaces.** The cost to replace one furnace is \$1,800. The total cost for all 6 replacements is \$10,800.
- **Ten (10) swamp coolers.** The cost to replace one swamp cooler is \$1,400. The total cost for all 10 replacements is \$14,000.
- **Thirteen (13) water heaters.** The cost to replace one water heater is \$760. The total cost for all 13 replacements is \$9,880.

**3. Minimum Service Level.**

Bess agrees that he shall perform the tasks set forth above in an efficient and professional manner, and that he shall provide said services at a level consistent with the standards set forth in applicable law and the industry.

**4. WVCHA Obligations.**

As consideration for the services provided by Bess, the WVCHA agrees to pay Bess \$34,680.

**5. Schedule.**

Bess shall perform services included in Paragraph 1 of this Agreement for WVCHA by February 28, 2012.

**6. Independent Contractor.**

- a. Bess shall be an independent contractor and, as such, shall have no authorization, expressed or implied, to bind the WVCHA to any agreements, settlements, liability, or understanding whatsoever. Bess agrees not to perform any acts as agent for the WVCHA, except as expressly set forth in this Agreement. Bess shall not represent himself to anyone as an employee of the WVCHA, but shall only represent himself as an independent contractor.
- b. Bess shall be responsible for his own actions, specifically including liability resulting therefrom, and also including, but not limited to, benefits, insurance, workers compensation, and/or other applicable items.
- c. Bess may not provide the services set forth in this Agreement through the use of his employees, agents, or subcontractors without the written approval of the WVCHA.
- d. The WVCHA shall not provide Bess' worker's compensation insurance, unemployment compensation insurance, or health insurance. Nothing in this Agreement shall be construed as entitling Bess to any benefits, compensation, retirement, or protections provided by the WVCHA to WVCHA employees. As an independent contractor, Bess shall be responsible for personal insurance coverage and shall hold the WVCHA harmless and indemnify the WVCHA from and against any and all claims related to unemployment compensation and / or worker's compensation.

**7. Termination of Agreement.**

- a. Either party may terminate this Agreement without cause by giving the other party five (5) days' prior written notice.
- b. Within 48 hours of the termination of this Agreement or at the end of the term of this Agreement, Bess shall return to the WVCHA any WVCHA equipment or documents that he may have in his possession.
- c. The WVCHA may terminate this contract in whole, or in part, whenever the WVCHA determines that such termination is in the best interest of the WVCHA. Any such termination shall be effected by delivery to Bess of a Notice of Termination specifying the extent to which the performance of the work under the contract is terminated, and the date upon which such termination becomes effective.
- d. If the performance of the work is terminated, either in whole or in part, the WVCHA shall be liable to Bess for reasonable and proper costs resulting from such termination upon the receipt by the WVCHA of a properly presented claim setting out in detail: (1) the total cost of the work performed to date of termination less the total amount of contract payments made to Bess; (2) the cost (including reasonable profit) of settling and paying claims under subcontracts and material orders for work performed and materials and supplies delivered to the site, payment for which has not been made by the WVCHA to Bess or by Bess to the subcontractor or supplier; (3) the cost of preserving and protecting the work already performed until the WVCHA or assignee takes possession thereof or assumes responsibility therefore; (4) the actual or estimated cost of legal and accounting services reasonably necessary to prepare and present the termination claim to the WVCHA; and (5) an amount constituting a reasonable profit on the value of the work performed by Bess.
- e. If the performance of the work is terminated, either in whole or in part, the WVCHA shall be liable to Bess for reasonable and proper costs resulting from such termination upon the receipt by the WVCHA of a properly presented claim setting out in detail: (1) the total cost of the work performed to date of termination less the total amount of contract payments made to Bess; (2) the cost (including reasonable profit) of settling and paying claims under subcontracts and material orders for work performed and materials and supplies delivered to the site, payment for which has not been made by the WVCHA to Bess or by Bess to the subcontractor or supplier; (3) the cost of preserving and protecting the work already performed until the WVCHA or assignee takes possession thereof or assumes responsibility therefore; (4) the actual or estimated cost of legal and accounting services reasonably necessary to prepare and present the termination claim to the WVCHA; and (5) an amount constituting a reasonable profit on the value of the work performed by Bess.

- f. The WVCHA will act on Bess' claim within days (60 days unless otherwise indicated) of receipt of the claim.
- g. Any disputes with regard to this clause are expressly made subject to the provisions of the Disputes clause of this contract.

**8. Indemnification.**

- a. Bess agrees to indemnify and hold harmless the WVCHA for any damages, causes of action, costs, or claims that may arise in the performance of this Agreement that are caused by the actions or negligence of Bess.

**9. Applicable Laws.**

- a. Bess shall obey all laws, ordinances, regulations, and rules of the federal, state, county, and municipal governments that may be applicable to Bess' actions pursuant to this Agreement.
- b. If Bess' actions constitute or cause a violation of federal, state, or local law, said actions shall constitute a breach of this Agreement, and Bess shall hold the WVCHA harmless from any and all liability arising out of, or in connection with, said violations, including any attorney's fees and costs incurred by the WVCHA as a result of such violations.
- c. This Agreement shall be construed under and in accordance with the laws of the State of Utah.

**10. Notices.**

Any notice required by this Agreement may be served by mailing or delivering such notice to the following addresses:

If to the WVCHA: West Valley City Housing Authority  
Attn: Chris Curtis  
3600 Constitution Boulevard  
West Valley City, Utah 84119

If to Director: Dave Bess Plumbing & Heating  
P.O Box 241  
Riverton, Utah 84065  
Phone: 254-0406

Either party may change its address upon notice to the other party.

**11. WVCHA Representative.**

The WVCHA hereby appoints Chris Curtis, or her designee, as the WVCHA's representative to assist in the administrative management of this Agreement, to ensure that the work to be performed by Bess is timely and adequately performed, and to provide for WVCHA approvals as may be required by this Agreement. The WVCHA's representative shall assist in coordinating, monitoring, and evaluating this Agreement to completion.

**12. Attorney's Fees.**

In the event of default hereunder, the defaulting party agrees to pay all costs incurred by the non-defaulting party in enforcing this Agreement, including reasonable attorney's fees, whether by in-house or outside counsel, and whether incurred through initiation of legal proceedings or otherwise.

**13. Entire Agreement.**

This Agreement contains the entire agreement between the parties, and no statement, promise, or inducements made by either party or agents for either party, which are not contained in this written Agreement, shall be binding or valid; and this Agreement may not be enlarged, modified, or altered, except in writing signed by both parties.

**14. Assignment.**

This Agreement may not be transferred or assigned by Bess without the written permission of the WVCHA, which may be withheld at the WVCHA's sole discretion.

**15. Severability.**

In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions shall remain valid and binding upon the parties. One or more waiver of any term, condition, or other provision of this Agreement by either party shall not be construed as a waiver of a subsequent breach of the same or any other provision.

**16. Disputes.**

- a. Except for disputes arising under the **Labor Standards** clauses, all disputes arising under or relating to this contract, including any claims for damages for the alleged breach thereof which are not disposed of by agreement, shall be resolved under this clause.

- b. All claims by Bess shall be made in writing and submitted to the WVCHA for a written decision. A claim by the WVCHA against the Bess shall be subject to a written decision by the WVCHA.
- c. The WVCHA shall, within 30 days after receipt of the request, decide the claim or notify Bess of the date by which the decision will be made.
- d. The WVCHA's decision shall be final unless Bess (1) appeals in writing to a higher level in the WVCHA in accordance with the WVCHA's policy and procedures, (2) refers the appeal to an independent mediator or arbitrator, or (3) files suit in a court of competent jurisdiction. Such appeal must be made within 30 days after receipt of the WVCHA's decision.
- e. Bess shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the WVCHA.

**17. Prohibition Against Liens.**

Bess is prohibited from placing a lien on the WVCHA's property. This prohibition shall apply to all subcontractors at any tier and all materials suppliers. The only liens on the WVCHA's property shall be the Declaration of Trust or other liens approved by HUD.

**18. Default.**

- a. If Bess refuses or fails to prosecute the work, or any separable part thereof, with the diligence that will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within this time, WVCHA may, by written notice to Bess, terminate the right to proceed with the work (or separable part of the work) that has been delayed. In this event, the WVCHA may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, equipment, and plant on the work site necessary for completing the work. Bess and its sureties shall be liable for any damage to the WVCHA resulting from Bess's refusal or failure to complete the work within the specified time, whether or not Bess's right to proceed with the work is terminated. This liability includes any increased costs incurred by the WVCHA in completing the work.
- b. Bess' right to proceed shall not be terminated nor charged with damages under this clause if :

- (1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of Bess; and

- (2) Bess, within 10 days from the beginning of such delay notifies WVCHA in writing of the causes of delay. WVCHA shall ascertain the facts and the extent of the delay. If, in the judgment of WVCHA, the findings of Fact warrant such action, time for completing the work shall be extended by written modification to the contract. The findings of WVCHA shall be reduced to a written decision which shall be subject to the provisions of the **Disputes** clause of this contract.
- c. If, after termination of Bess' right to proceed, it is determined that Bess was not in default, or that the delay was excusable, the rights and obligation of the parties will be the same as if the termination had been for convenience of the WVCHA.

**19. Contract Modifications.**

- a. Only WVCHA has authority to modify any term or condition of this contract. Any contract modification shall be authorized in writing.
- b. WVCHA may modify the contract unilaterally (1) pursuant to a specific authorization stated in a contract clause (e.g., Changes); or (2) for administrative matters which do not change the rights or responsibilities of the parties (e.g., change in the WVCHA address). All other contract modifications shall be in the form of supplemental agreements signed by Bess and WVCHA.
- c. When a proposed modification requires the approval of HUD prior to its issuance (e.g., a change order that exceeds the WVCHA's approved threshold), such modification shall not be effective until the required approval is received by the WVCHA.

**20. Changes.**

- a. WVCHA may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract including changes:
- (1) In the specifications (including drawings and designs);
  - (2) In the method or manner of performance of the work;
  - (3) WVCHA -furnished facilities, equipment, materials, services, or site; or,
  - (4) Directing the acceleration in the performance of the work.
- b. Any other written order or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from WVCHA that causes a change shall be treated as a change order under this clause; provided, that Bess gives WVCHA written notice stating (1) the date, circumstances and source of the order and (2) that Bess regards the order as a change order.

- c. Except as provided in this clause, no order, statement or conduct of WVCHA shall be treated as a change under this clause or entitle Bess to an equitable adjustment.
- d. If any change under this clause causes an increase or decrease in Bess's cost of, or the time required for the performance of any part of the work under this contract, whether or not changed by any such order, WVCHA shall make an equitable adjustment and modify the contract in writing. However, except for a adjustment based on defective specifications, no proposal for any change under paragraph (b) above shall be allowed for any costs incurred more than 20 days (5 days for oral orders) before Bess gives written notice as required. In the case of defective specifications for which the WVCHA is responsible, the equitable adjustment shall include any increased cost reasonably incurred by Bess in attempting to comply with the defective specifications.
- e. Bess must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause, or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting a written statement describing the general nature and the amount of the proposal. If the facts justify it, WVCHA may extend the period for submission. The proposal may be included in the notice required under paragraph (b) above. No proposal by Bess for an equitable adjustment shall be allowed if asserted after final payment under this contract.
- f. Bess's written proposal for equitable adjustment shall be submitted in the form of a lump sum proposal supported with an itemized breakdown of all increases and decreases in the contract in at least the following details:
  - (1) Direct Costs. Materials (list individual items, the quantity and unit cost of each, and the aggregate cost); Transportation and delivery costs associated with materials; Labor breakdowns by hours or unit costs (identified with specific work to be performed); Construction equipment exclusively necessary for the change; Costs of preparation and/ or revision to shop drawings resulting from the change; Worker's Compensation and Public Liability Insurance; Employment taxes under FICA and FUTA; and, Bond Costs - when size of change warrants revision.
  - (2) Indirect Costs. Indirect costs may include overhead, general and administrative expenses, and fringe benefits not normally treated as direct costs.
  - (3) Profit. The amount of profit shall be negotiated and may vary according to the nature, extent, and complexity of the work required by the change.



The allowability of the direct and indirect costs shall be determined in accordance with the Contract Cost Principles and Procedures for Commercial Firms in Part 31 of the Federal Acquisition Regulation (48 CFR 1-31), as implemented by HUD Handbook 2210.18, in effect on the date of this contract. Bess shall not be allowed a profit on the profit received by any subcontractor. Equitable adjustments for deleted work shall include a credit for profit and may include a credit for indirect costs. On proposals covering both increases and decreases in the amount of the contract, the application of indirect costs and profit shall be on the net-change in direct costs for Bess or subcontractor performing the work.

- g. Bess shall include in the proposal its request for time extension (if any), and shall include sufficient information and dates to demonstrate whether and to what extent the change will delay the completion of the contract in its entirety.
- h. WVCHA shall act on proposals within 30 days after their receipt, or notify Bess of the date when such action will be taken.
- i. Failure to reach an agreement on any proposal shall be a dispute under the clause entitled Disputes herein. Nothing in this clause, however, shall excuse Bess from proceeding with the contract as changed.
- j. Except in an emergency endangering life or property, no change shall be made by Bess without a prior order from WVCHA.

**21. Examination and Retention of Contractor's Records.**

The WVCHA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until three years after final payment under this contract, have access to and the right to examine any of Bess's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

**22. Energy Efficiency.**

Bess shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L. 94-163) for the State in which the work under this contract is performed.

